Supreme Court, U.S.
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No. 97-1480

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

PRO-FOOTBALL, INC. d/b/a
THE WASHINGTON REDSKINS,

Petitioner,

v.

HARTFORD ACCIDENT AND INDEMNITY COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITIONER'S REPLY BRIEF

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In its Petition for Writ of Certiorari, Pro-Football, Inc. ("PFI") demonstrated that it shifted the risk of loss for workers' compensation claims to Respondent Hartford by purchasing workers' compensation insurance policies (collectively, the "Policy") from Hartford. In the Policy, Hartford agreed to charge Virginia premiums in return for this shifting of risk. This expressly agreed upon term of the Policy reflected the fact that PFI's players spend the vast majority of their working hours in Virginia and work in the District of Columbia only 8-12 times a year.[1] In fact, Hartford continued to charge Virginia premium rates even after the District of Columbia Department of Employment Services found certain of PFI's players eligible for District of Columbia workers' compensation benefits in the *Anderson* case. Moreover, as Hartford has admitted, the District of Columbia Court of Appeals, in affirming *Anderson*, said nothing about whether Hartford could charge District of Columbia premium rates.[2]

[1]Without any support from the record, Hartford claims it "expressed an intent to treat the Redskins' players as D.C. employees and charge D.C. rates" and "agreed to cover the players as Virginia employees" only after "PFI protested being charged D.C. rates." Brief in Opposition ("Opp.") at 2. The record, however, shows that PFI's insurance broker "advised [PFI] that it was appropriate to classify players as Virginia employees" and that Hartford "did not believe that such a classification was improper." Joint Stipulations of Fact ("J.S.") ¶ 36. The record further shows that "[t]he premium actually paid by [PFI] was calculated using rates and rating rules established and approved by Virginia" for players. *Id.* ¶ 53.

[2]Thus, Hartford is simply wrong when it asserts that *Anderson* "settled the question" of whether PFI's players were District of Columbia employees "for workers' compensation purposes." Opp. at 2. The only question *Anderson* settled was whether players were District of Columbia employees for the purpose of eligibility for workers' compensation *benefits*. The decision said nothing whatsoever about whether they were District of Columbia employees for purposes of calculating insurance *premiums*.

Nonetheless, the District of Columbia Circuit in the present case relied on *Anderson* in ordering summary judgment for Hartford on the question of whether the Policy permitted Hartford to charge District of Columbia premium rates retroactively. In so holding, the court below wrongfully relieved Hartford of its burden under Fed. R. Civ. P. 56 of demonstrating that its reading of the Policy was the only reasonable one. The court's opinion thus conflicts with decisions of this Court and other Circuits holding that the party moving for summary judgment bears the burden of demonstrating the absence of genuine issues of material fact and entitlement to judgment as a matter of law. The District of Columbia Circuit's opinion also conflicts with opinions of other Circuits holding that summary judgment is inappropriate in contract cases unless there is only one plausible reading of the contract.

Hartford is, therefore, wrong when it claims that "[t]he decision of the court below does not rest upon any federal statute or rule," but rather "reflects" only "an application by the court of appeals of the local jurisprudence of the District of Columbia." Opp. at 1. Rule 56 controls whenever a party seeks to uphold summary judgment. Moreover, when a court of appeals lessens the moving party's burden under this rule -- contrary to the decisions of this Court and other Circuits -- certiorari should be granted and the decision below reversed.[3]

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[3]Hartford suggests (Opp. at 3) that PFI did not press its point regarding the allocation of the burden of proof on summary judgment in the court below. What Hartford ignores is that the District Court properly allocated the burden and, consequently, neither party had to argue the burden issue on appeal. It was only when the appellate court erroneously relieved Hartford of this burden that it became appropriate for PFI to raise this issue.

The decision below rests not only on Fed. R. Civ. P. 56 but on another federal rule as well. Fed. R. Civ. P. 12(a)(4) expressly allows a defendant 10 days to answer and counterclaim following the denial of a motion to dismiss. Here, Hartford filed its complaint two days before the expiration of the statute of limitations. PFI moved to dismiss and, when its motion was denied, answered and counterclaimed within the 10-day limit. The Court of Appeals nevertheless affirmed the dismissal of PFI's compulsory counterclaims as untimely, reasoning that the filing of Hartford's complaint did not toll the statute of limitations.

In so holding, the court below effectively abrogated the time limit set forth in Fed. R. Civ. P. 12(a)(4) and denied PFI its day in court on the merits of its counterclaims. Under the lower court's ruling, a party does not, in fact, have the time periods set forth in the Federal Rules in which to answer and counterclaim. Rather, in the lower court's opinion, PFI had only two days to find and retain an attorney who could not move to dismiss, but rather had to answer and counterclaim immediately or lose the right to file even compulsory counterclaims. This result contravenes the policies underlying the Federal Rules of Civil Procedure.

In response, Hartford claims that PFI "asks this Court to conform D.C. law to a majority rule on the relation back of counterclaims." Opp. at 4. This claim mischaracterizes PFI's argument. PFI does not ask this Court to force the District of Columbia to adopt the "majority rule," under which the filing of a complaint tolls the statute of limitations for compulsory counterclaims. Rather, PFI submits that the District of Columbia already follows the majority rule, *see DeVito v. Hoffman*, 199 F.2d

468 (D.C. Cir. 1952), and that the court below erred in holding otherwise. What makes this holding worthy of certiorari is that, by misreading District of Columbia law, the lower court essentially disregarded Rule 12(a)(4). If, as Hartford claims, the District of Columbia follows the minority rule, then a litigant such as Hartford can wait until just before the statute of limitations runs to file a lawsuit and then obtain dismissal of compulsory counterclaims even if they were filed within the time limits specified in Rule 12(a)(4). As PFI has shown, such a result is bad law and bad policy because it effectively reads those time limits out of the Rule and, contrary to sound public policy, actually encourages litigation. Accordingly, this Court should grant certiorari to review the dismissal of PFI's counterclaims as well.

CONCLUSION

For all the reasons set forth above and in the Petition, PFI respectfully asks this Court to issue a writ of certiorari and reverse the judgment below.

Respectfully submitted,

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